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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,260	02/24/2005	Klaus L Svendsen	66722-068-7	2863

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DYKEMA GOSSETT PLLC  
FRANKLIN SQUARE, THIRD FLOOR WEST  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER

LE, HUYEN D

ART UNIT PAPER NUMBER

2646

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/520,260

**Applicant(s)**

SVENDSEN ET AL.

**Examiner**

HUYEN D. LE

**Art Unit**

2646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/06/05</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4 (as broadly claimed) are rejected under 35 U.S.C. 102(b) as being anticipated by Hartl (U.S. patent 4,639,556).

Regarding claim 1, Hartl teaches a hearing aid that comprises at least one structural part (1, 2, 3, figures 1, 2, 3), two or more spaced apart electronic components (5, 5a, 8, 9, 10, 14, 16), and electric leads (figures 2, 3 and see col. 2, lines 46-49) as claimed. As shown in the drawings, the electric leads interconnect the electronic components and they are provided on the surface of the housing part (1, 2, 3) of the hearing aid.

Regarding claim 4, as broadly claimed, it appears that at least one lead of the Hartl device penetrates through a thickness of a wall part (2, 3).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2646

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartl et al. (U.S. patent 4,639,556).

Regarding claim 2, Hartl shows the leads that are provided on the inside of a casing (1, 2, 3). Hartl does not specifically teach that the hearing aid is a behind-the-ear type as claimed in claim 2. However, providing a hearing aid of an in-the-ear type or behind-the-ear type is very well known in the art.

Since Hartl does not restrict to any type of the hearing aids (col. 1, lines 7-8); it therefore would have been obvious to one skilled in the art to provide any type of the hearing aids such as a behind-the-ear type for greater application.

Regarding claim 3, as broadly claimed, the leads and at least some components of the Hartl device are provided on an internal wall (3, 9, 11) that divides the inside space of the casing into two compartments (figure 2).

Regarding claim 4, as interpreted in a different manner, Hartl does not specifically disclose that at least one lead penetrates through a thickness of a wall part as claimed. However, Hartl does show the leads that are on the surface of a wall part (2, 3).

Art Unit: 2646

Further, Hartl does not restrict how the leads are disposed in the interior of the housing (col. 2, lines 46-49); it therefore would have been obvious to one skilled in the art to penetrate the leads on the wall part (2, 3) of the Hartl housing for better positioning and securing the leads on the housing.

Regarding claim 5, the in-the-ear hearing aid of Hartl comprises a shell (1) to fit inside the ear and ear canal of a wearer, a faceplate (2) and the leads that are formed on the inside surface of the face plate as claimed.

Hartl does not specifically teach that the shell (1) is a custom made to fit inside the ear of a wearer as claimed. However, providing a custom made to fit inside the ear of a wearer for an in-the-ear hearing aid is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide a custom made to the hearing aid housing (1) of Hartl for better fitting to the ear of an individual.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571)-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2646

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL

June 17, 2005



HUYEN LE  
PRIMARY EXAMINER